



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

March 10, 1998

Mr. Matthew Lee  
Executive Director  
Inner City Press/Community on the Move  
Inner City Public Interest Law Project  
P.O. Box 416  
HUB Station  
Bronx, New York 10455

Dear Mr. Lee:

This is in response to your several requests regarding the Board's approval of a proposal by North Fork Bancorporation, Inc., Melville ("North Fork"), to acquire New York Bancorp, Inc., Douglaston, and its subsidiary, Home Federal Savings Bank, Ridgewood ("Savings Bank"), all in New York.<sup>1/</sup> Your requests have been treated as a request for reconsideration of the Order.

The public comment period on North Fork's application began on November 28, 1997, and ended on January 20, 1998.<sup>2/</sup> You submitted substantial comments on the North Fork proposal on January 20 that were discussed in detail in the Order. On February 2, you submitted supplemental comments, and the Secretary of the Board, acting under delegated authority, determined that the submission was untimely and that no extraordinary circumstances existed to warrant their inclusion in the record of the application. You have requested that the Board review the Secretary's decision. Your

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<sup>1/</sup> North Fork Bancorporation, 84 Federal Reserve Bulletin\_\_ (1998) (Order dated February 9, 1998)("Order").

<sup>2/</sup> The public comment period for the proposal was approximately 50 days.

request for review was not received in time to permit the Board to act before it considered North Fork's proposal.<sup>3/</sup>

In a separate letter, you have requested that the Board rescind the Order. You also request a stay of the order and additional time to file a request for reconsideration in light of an appeal from a denial of your request under the Freedom of Information Act ("FOIA") for confidential information submitted by North Fork.

*Request for Reconsideration.* The Board's Rules of Procedure provide that a request for reconsideration must present "relevant facts that, for good cause shown, were not previously presented to the Board."<sup>4/</sup> Substantial portions of your February 2 submission restate allegations in your January 20 submission that were discussed in detail in the Order.

You also allege for the first time that North Fork intends to terminate Savings Bank's mortgage origination and servicing operations and to lay off employees. North Fork stated in its application that the CRA policies and programs of its subsidiary, North Fork Bank, Mattituck, New York ("North Fork Bank"), would be implemented at Savings Bank after consummation of the proposal, and North Fork made no representation that Savings Bank's mortgage operations would be retained. Based on all the facts of record, including your contentions regarding North Fork's policies and programs, and for the reasons discussed in detail in the Order, the Board concluded that North Fork's record of performance under the CRA was consistent with approval.<sup>5/</sup> Your new allegation does not contradict North Fork's representations about its CRA plans

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<sup>3/</sup> You requested review of the Secretary's decision on Friday, February 6, and the Board approved the proposal on Monday, February 9.

<sup>4/</sup> 12 C.F.R. 262.3(k).

<sup>5/</sup> The February 2 submission also reiterates your request for a public meeting or hearing, or an informal meeting, that was denied by the Board for the reasons discussed in the Order. You allege for the first time that a factual dispute exists over the tenor of your discussions with North Fork. The tenor of discussion between you and North Fork does not present a factual issue that is material to the Board's consideration of the proposal.

and programs. Accordingly, you have not presented a new relevant fact that for good cause shown, was not previously presented to the Board.<sup>6/</sup>

*Review of Delegated Action.* Your submission dated February 2, 1998, was a response to North Fork's reply to your comments of January 20.<sup>7/</sup> You object to the Board's policy of not accepting supplemental comments after the close of the public comment period from a timely commenter. You also contend that your comments of February 2 presented extraordinary circumstances that warranted their inclusion in the record of the application.<sup>8/</sup>

As part of the revisions to Regulation Y (Bank Holding Companies and Change in Bank Control) last year,<sup>9/</sup> the Board determined to adhere to its current Rules of Procedure for considering public comments and to discontinue its practice of routinely considering comments, including supplemental

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<sup>6/</sup> Your February 2 submission also maintains that the Board should delay consideration of the North Fork proposal until related applications are acted on by the FDIC and the New York State Banking Department ("NYSBD"), particularly in light of the NYSBD's role in obtaining a commitment from North Fork to improve its CRA performance record in connection with an acquisition by North Fork in 1996. For all the reasons discussed in the Order, the record before the Board was sufficient to warrant Board consideration and action on the proposal within the time constraints of the Bank Holding Company Act ("BHC Act"), and delay in considering the proposal until other bank agencies act is not warranted.

<sup>7/</sup> North Fork submitted its response to your comments on January 30, within eight business days as provided in the Board's Rules of Procedure. See 12 C.F.R. 262.3(e).

<sup>8/</sup> The Board is not estopped, as you contend, from declining to accept your February 2 submission because the letter from the Federal Reserve Bank of New York, which acknowledged your January 20 submission, generally noted how you should address any additional comments on the proposal. No extension of the comment period was discussed or granted in the Reserve Bank's letter and, as you are aware, Reserve Banks do not have authority to extend a comment period.

<sup>9/</sup> 62 Federal Register 9290 (February 28, 1997).

comments, filed after the close of the comment period.<sup>10/</sup> The Board reached this conclusion after carefully reviewing a number of considerations and public comments, including the steps implemented in the revisions to improve the effectiveness of the public notice of acquisition proposals and to enhance the ability of interested persons to comment on the proposal within the public comment period.<sup>11/</sup> The Board also reserved the right, at its discretion, to consider late comments, but stated that it expected to exercise that discretion only in extraordinary circumstances.<sup>12/</sup>

The Board's Rules, therefore, are designed to provide a meaningful opportunity for public comment and for the applicant to provide a response to those comments within the time constraints of the BHC Act. They do not, however, guarantee commenters an opportunity to continue the process of submitting additional comments in rebuttal to an applicant's response after the close of the public comment period.<sup>13/</sup> However, commenters may have the

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<sup>10/</sup> See 12 C.F.R. 262.3(e) stating that the Board is required to consider a comment involving an application or notice only if the comment is in writing and received by the System prior to the expiration of the public comment period.

<sup>11/</sup> Pursuant to the revisions to Regulation Y, a list of acquisitions that are subject to public comment is made available by mail, Internet and fax. In addition, processing procedures require regulatory filings to be submitted at least 15 days before the expiration of the public comment period. The Board also noted that the public may at any time submit comments regarding the effectiveness of an insured institution in meeting the convenience and needs of the community for consideration in connection with an on-site examination of the CRA performance of the institution. Such comments provide the most effective opportunity for the public to affect the CRA performance and CRA rating of any institution and provide a regularly occurring opportunity for public input. 62 Federal Register at 9295.

<sup>12/</sup> Id.

<sup>13/</sup> See NationsBank Corporation, 84 Federal Reserve Bulletin 129, 141 n. 54 (1998).

opportunity to supplement their comments under the Rules if they provide their initial comments early in the comment period.<sup>14/</sup>

You also contend that your February 2 submission presented extraordinary circumstances.<sup>15/</sup> North Fork's submission of confidential exhibits did not substantively interfere with your opportunity to comment because you had been previously provided with much of the information covered in the exhibits, including North Fork's proposed branch closings, lending data collected in 1997 by North Fork under the Home Mortgage Disclosure Act, and quarterly reports on North Fork's efforts to improve its CRA performance in 1997. As noted, your January 20 submission contained substantial comments on these matters that were carefully considered by the Board.

Your delay in filing comments while you were in discussions with North Fork also does not constitute an extraordinary circumstance. Although communications by depository institutions with community groups provide a valuable method of assessing and determining how an institution can best address the credit needs of the community, the Board previously has stated that the CRA does not require an insured depository institution to enter into agreements with any organization. Rather, the Board is required to focus on the

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<sup>14/</sup> The fact that your February 2 comments were submitted before the next business day after North Fork's reply does not relieve you from "needing to" show that extraordinary circumstances were present that justify consideration of your untimely comments.

<sup>15/</sup> You also contend that North Fork plans to terminate Savings Bank's mortgage operations and that this would constitute an extraordinary circumstance warranting acceptance of your February 2 submission. This allegation does not represent an extraordinary circumstance and, in any event, the allegation was considered as a request for reconsideration.

policies and programs that the applicant has in place to assist in serving the credit needs of its communities.<sup>16/</sup>

*Stay of Order/Extension of Time to Request Reconsideration.* You also request a stay of the Order and additional time to file a request for reconsideration in light of your FOIA appeal.

In considering a request for a stay of an order, the Board applies the same factors that the courts must consider in acting on such requests.<sup>17/</sup> In the Second Circuit, those factors have been identified as: "(1) whether the movant will suffer irreparable injury absent a stay; (2) whether a party will suffer substantial injury if a stay is issued; (3) whether the movant has demonstrated 'a substantial possibility, although less than a likelihood, of success' on appeal; and (4) the public interests that may be affected."<sup>18/</sup>

Your request fails to present facts demonstrating that consummation of this proposal would harm your organization or any member or affiliate of your organization, much less cause irreparable harm. In addition, for the reasons discussed in this letter and the Board's order, and in light of all the facts of record, the Board believes that its findings and conclusions are supported by substantial evidence, and that there is not a substantial possibility that you would prevail on the merits of this matter. Furthermore, a stay of the Order might have adverse economic effects on North Fork and Savings Bank that would not be warranted in light of the likelihood that you would prevail on the merits. Finally, the information you have requested under the FOIA is confidential and it is unlikely that you will prevail in your FOIA appeal.

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<sup>16/</sup> The revisions to Regulation Y, moreover, do not present a basis for an extension in this case. Regulation Y includes a provision that attempts to accommodate discussions between interested persons and an applicant by providing for an extension of the public comment period where a joint request is made by the parties to allow completion of discussions regarding matters that are relevant to the statutory factors the Board must consider. No joint request was made in this case. See 12 C.F.R. 225.16(c)(2)(iii).

<sup>17/</sup> See, e.g., Board letter dated May 6, 1987, to Mr. James B. Weidner.

<sup>18/</sup> LaRouche v. Kezer, 20 F.3d 68, 72 (2d Cir. 1994).

Your requests have been presented to the members of the Board to give them an opportunity to determine whether your requests warrant reconsideration or modification of the Order or a different finding under the statutory factors the Board is required to consider under the BHC Act. For the reasons discussed above and in the Board's order, and based on all the facts of record, no member of the Board has asked that your requests be granted or that the Board's order in any way be modified. Accordingly, your requests are hereby denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jennifer J. Johnson". The signature is fluid and cursive, with the first name "Jennifer" and last name "Johnson" clearly distinguishable.

Jennifer J. Johnson

Deputy Secretary of the Board

cc: Federal Reserve Bank of New York  
William J. Sweet, Jr., Esq.,  
Counsel to North Fork Bancorporation